

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:24-cv-943**

CIVIL RIGHTS CORPS,

Plaintiff,

v.

Case No.: 1:24-cv-943

JUDGE DORETTA L. WALKER, in
her official capacity, and
CLARENCE F. BIRKHEAD, in his
official capacity,

Defendants.

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR
INITIAL PRETRIAL CONFERENCE**

Plaintiff Civil Rights Corps, in accordance with Federal Rule of Civil Procedure 16 and Local Rule 16.1, respectfully moves the Court to schedule an initial pretrial conference to discuss commencing discovery pursuant to Federal Rules of Civil Procedure 16(b) and 26(f).

This is a case about fundamental constitutional rights. Plaintiff, a civil rights law firm, is dedicated to addressing systemic injustice in the legal system through advocacy, policy reform, and litigation. For the past two years, Plaintiff has sought to understand the effects of North Carolina's dependency court system on marginalized and underrepresented youth and families. But Defendants Walker and Birkhead repeatedly have prevented Plaintiff from attending dependency hearings in

Durham, North Carolina in violation of Plaintiff's First Amendment presumptive right to observe these proceedings. These denials have severely impaired Plaintiff's ability to investigate the functioning of dependency court, thereby undermining both its organizational mission and its First Amendment right of access to observe these judicial proceedings, which are adversarial, evidentiary, counseled hearings impacting the most fundamental rights of the families involved.

Plaintiff filed this complaint on November 13, 2024, and promptly moved for a preliminary injunction prohibiting Defendant Birkhead from enforcing unconstitutional court-exclusion orders. ECF Nos. 1, 12. Briefing on Plaintiff's motion for a preliminary injunction was complete on February 7, 2025.

Defendants Birkhead and Walker filed Motions to Dismiss this action on January 13, 2025 and February 13, 2025, respectively. ECF Nos. 43, 65. Non-party North Carolina Administrative Office of the Courts ("AOC") filed a Motion to Intervene in the action on January 13, 2025, ECF No. 41, and a Motion to Dismiss on February 13, 2025, ECF No. 67. The Parties completed briefing on the Motions to Dismiss and the Motion to Intervene on April 1, 2025.

It has been more than eight months since this case was filed. The parties should begin discovery on key issues while

the preliminary injunction and pleading motions are under submission. Federal Rule of Civil Procedure 16(b)(2) provides that a scheduling order should issue within 90 days after a defendant is served, absent good cause. The 2015 Advisory Committee Notes explain that this timeline was reduced to avoid delay at the beginning of litigation. The 1983 Advisory Committee Notes also provides that “[a] scheduling conference may be requested ... [by] a party” once the 90-day timeline in Rule 16(b)(2) has passed. At this point, as noted, it has been eight months since the case was filed and Defendants were served, and Defendants have had more than adequate time to prepare for a Rule 26(f) conference.

Given the importance of the issues in this case, targeted discovery is appropriate even while motions to dismiss remain pending. This Court has stated that it disfavors staying discovery pending a motion to dismiss because delaying or prolonging discovery “can create case management problems,” including causing “unnecessary litigation expenses.” *M.P.T. Racing, Inc. v. Bros. Rsch. Corp.*, No. 1:22-CV-334, 2022 WL 19355619, at *1 (M.D.N.C. June 30, 2022) (quoting *Tilley v. United States*, 270 F. Supp. 2d 731, 734 (M.D.N.C. 2003) and *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C. 1988)).

As Plaintiff's motion for preliminary injunction shows, this case is about an ongoing denial of First Amendment rights. A prompt resolution of this case is critically important to avoid further constitutional prejudice.

On July 10, 2025 Plaintiff requested that the parties hold a Rule 26(f) conference. Defendant Birkhead refused to schedule a conference while dispositive motions were pending and Defendant Walker failed to respond.

For these reasons, Plaintiff respectfully requests that the Court grant this motion and schedule an initial pretrial conference at its earliest convenience.

Dated: July 22, 2025

Respectfully submitted,

/s/ Christopher J. Heaney

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CERTIFICATE OF WORD COUNT

Pursuant to Civil Local Rule 7.3(d), I hereby certify that the text of this brief contains 603 words, including headings and footnotes. In making this certification, I have relied on the word count of Microsoft Word, used to prepare the brief.

Dated: July 22, 2025

Respectfully submitted,

/s/ Rohit K. Singla

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using the CM/ECF system to the following: **Judge Doretta L. Walker, Clarence F. Birkhead**, and proposed intervenor **North Carolina Administrative Office of the Courts.**

Dated: July 22, 2025

Respectfully submitted,

/s/ Rohit K. Singla

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